

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7497 of 2001
and
SPECIAL CIVIL APPLICATION No 7498 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DHOLIBEN MAVJIBHAI

Appearance:

MR RV DESAI, AGP for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/12/2001

COMMON ORAL JUDGEMENT

Both these petitions filed by State of Gujarat through the Deputy Secretary, Agriculture and Cooperation Department challenge the judgment and award dated 18.12.2000 passed by the Labour Court, Surendranagar in Reference (LCS) No. 255 of 1993 whereby the Labour Court

declared as illegal the action of the Assistant Director of Agriculture, Kukada Agricultural Farm on 9.4.1993 and also directed the employer to reinstate the respondent-workmen with continuity of service but without backwages.

2. Heard Mr RV Desai, learned AGP for the State of Gujarat. Though the respondents were served on 21.9.2001, none appears when the matter is called out today for final hearing. It was specifically stated in the notice of Rule that the hearing of these Special Civil Applications will take place on 16.10.2001 or any subsequent day convenient to the Court. Still none appears for the respondents.

3. The petitioner was running a horticulture farm at Kukada and the petitioner was not running any industry. The respondents were employed as daily wagers at the above agricultural farm run by the petitioner. Their services were not continued after 9.4.1993. Hence, they raised an industrial dispute which came to be allowed by the Labour Court in the aforesaid terms. Hence, these petitions by the State of Gujarat.

4. The learned AGP has submitted that the respondents had not served for 240 days because they were only seasonal workers. It is submitted that in the case of State of Gujarat vs. Pratamsingh Narsinh Parmar, JT 2001(3) SC 326 it has been held by the Apex Court that the Government department cannot generally be considered as an industry and that it is for the workman to show that the Government department is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). It is submitted that the petitioner had specifically taken the plea in the written statement before the Labour Court that the petitioner was not carrying on any industry, but still the respondent had not led any evidence to show that the petitioner was carrying on any industry. Even then the Labour Court has not merely not given any finding on the said issue, but has proceeded to apply the provisions of the Act. The respondent had abandoned his services in the year 1989, but the dispute was raised after more than two years. Reliance is also placed on the decision of the Apex Court in the case of Himanshu Kumar Vidyarthi vs. State of Bihar, AIR 1997 SC 3657 laying that in case of daily wagers there is no question of retrenchment; and on the decision of the Apex Court in the case of State of Himachal Pradesh vs. Suresh Kumar Verma, AIR 1996 SC 1565 laying down that when the workman is employed on any project and the project is closed

down, there cannot be any direction for reinstatement of a daily wage. It is pointed out by Mr Desai that in the instant case the horticulture farm where the respondent was employed was closed down. This fact was stated on behalf of the petitioner before the Labour Court earlier.

4. Having heard the learned AGP for the petitioner, it appears that there is considerable substance in the submissions made by the learned AGP. It has been held by the Apex Court in the case of State of Gujarat vs. Pratamsingh Narsinh Parmar, JT 2001(3) SC 326 as under :-

"5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes 'an industry'. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (JT 1995 (9) SC 465) to hold that the Forest Department could be held to be 'an industry'."

5. Further there is also considerable substance in the submission made by the learned AGP that in view of the decisions of the Apex Court in Himanshu Kumar Vidyarthi vs. State of Bihar, AIR 1997 SC 3657, State of

U.P. vs. Ajay Kumar, (1997) 4 SCC 88 and State of Himachal Pradesh vs. Suresh Kumar Verma, AIR 1996 SC 1565, daily wage appointments are in relation to contingent establishment in which there cannot exist any post and the vacancy continues so long as the work exists. In the facts of the instant case, the Labour Court has not at all considered the fact pointed out on behalf of the petitioner-employer that the horticulture farm in question was closed down. Since the respondent had put in less than 240 days service in each year prior to the date of alleged termination, the question of complying with the provisions of Section 25F did not arise, even assuming that the petitioner was carrying on any industry.

6. In view of the above discussion, the petitions deserve to be allowed and are accordingly allowed. The impugned judgment and award dated 18.12.2000 passed by the Labour Court, Surendranagar in Reference (LCS) No. 255 of 1993 is hereby quashed and set aside and the reference is dismissed.

7. Rule is made absolute with no order as to costs.

(M.S. Shah, J.)

sundar/-